

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAY CLARENCE ROGERS,

Plaintiff,

v.

TROY BACON, *et al.*,

Defendants.

Case No. C24-1465-MJP-MLP

REPORT AND RECOMMENDATION

I. INTRODUCTION

This is a civil rights action proceeding under 42 U.S.C. § 1983. Plaintiff is currently confined at the Maleng Regional Justice Center (“MRJC”) in Kent, Washington. (*See* dkt. # 16 at 3.) The claims asserted in this action appear to arise out of Plaintiff’s confinement at both the MRJC and the King County Correctional Facility (“KCCF”) in Seattle, Washington.¹ (*See* dkt. # 16 at 10, 26, 40.) This matter is now before the Court on the motion of Defendant Barbara Wakeen to dismiss the claim against her in this action on the grounds that it is frivolous under 28 U.S.C. § 1915(e)(2). (Dkt. # 43.) Plaintiff has filed a response opposing Defendant’s motion (dkt. # 50), and Defendant has filed a reply in support of her motion (dkt. # 53).

¹ Plaintiff, in his amended complaint, refers to these two facilities collectively as the “King County Jail.” (*See* dkt. # 16 at 10, 26, 40.)

1 The Court, having considered Plaintiff's amended complaint, Defendant Wakeen's
2 motion to dismiss, all briefing of the parties, and the governing law, concludes that Defendant's
3 motion should be denied.

4 II. BACKGROUND

5 On September 3, 2024, Plaintiff submitted to the Court for filing his original civil rights
6 complaint and an application to proceed with this action *in forma pauperis*. (Dkt. ## 1, 1-1.)
7 Plaintiff's application to proceed *in forma pauperis* was subsequently granted and his original
8 complaint was filed. (See dkt. ## 4-5.) The Court, however, declined to serve Plaintiff's
9 complaint because of deficiencies in that pleading, and granted him leave to file an amended
10 complaint. (Dkt. # 6.) On December 26, 2024, Plaintiff filed an amended complaint which is the
11 operative complaint in this action. (Dkt. # 16.)

12 Plaintiff's amended complaint sets forth three claims alleging unconstitutional action
13 and/or inaction by King County, nine King County Jail employees/officials, and Barbara
14 Wakeen, a registered dietician who provides contract services to the King County Department of
15 Adult and Juvenile Detention ("DAJD"). At issue here is the claim set forth in the first count of
16 Plaintiff's amended complaint. Plaintiff alleges therein that his First and Fourteenth Amendment
17 rights, and his rights under the Religious Land Use and Institutionalized Persons Act
18 ("RLUIPA"), were violated when Defendants failed to ensure that he was provided religious
19 dietary meals that met the requirements of his religion. (See dkt. # 16 at 8-25.)

20 Plaintiff asserts that he is an adherent of the religion House of Yaweh and sincerely
21 believes he must obey Yaweh laws, which includes keeping a kosher diet. (Dkt. # 16 at 12.)
22 Plaintiff further asserts that in May 2024 King County Jail officials granted final approval of his
23 request to receive kosher dietary meals for religious purposes. (*Id.* at 13.) Plaintiff complains,

1 however, that once he started receiving the new diet, he discovered the kosher meals merely
2 combined the standard diet meal and the vegan/vegetarian diet meal, with vegan/vegetarian or
3 soy-meat items being substituted for any meat included in the standard meal. (*Id.* at 13-14.)
4 Plaintiff claims that the Laws of Yahweh require he consume kosher meat, fish and poultry in
5 order to receive salvation and Yahweh blessings, and that the substituted vegan/vegetarian and
6 soy-meat items did not suffice to satisfy his religious dietary requirements. (*See id.* at 13-15.)
7 Plaintiff alleges Defendant Wakeen had final decision-making authority over the menu for the
8 kosher religious diet and that she was responsible for the improper substitution of
9 vegan/vegetarian and soy-meat menu items for kosher meat, fish, and poultry. (*Id.* at 21.)

10 Defendant Wakeen argues in her motion to dismiss that the claim asserted against her
11 here mirrors the claim asserted against her in another pending action, *Rogers v. Curtis*, Case No.
12 C23-1034-DGE-GJL, and that the redundant nature of the instant action renders it frivolous
13 under § 1915(e)(2). (Dkt. # 43.) The earlier action was filed by Plaintiff in July 2023 while he
14 was confined at KCCF. *See Rogers*, C23-1034-DGE-GJL, dkt. # 1. In May 2024, Plaintiff
15 submitted an amended complaint in that action, and the Court authorized the filing of the
16 amended pleading in July 2024. *See id.*, dkt. ## 105, 105-1, 115, 116. The amended complaint
17 named KCCF's "Certified Dietitian" as a defendant, and that individual was subsequently
18 identified as Barbara Wakeen, MA, RDN, LD, CD, CCFP, CCHP, of Correctional Nutrition
19 Consultants. *See id.*, dkt. # 116 at 6, dkt. # 121.

20 Among the allegations contained in Plaintiff's amended complaint in C23-1034-DGE-
21 GJL was that Ms. Wakeen, among others, violated Plaintiff's rights under the Fourteenth
22 Amendment and the Americans with Disabilities Act ("ADA") in relation to the meals he was
23 being provided at KCCF. *Rogers*, C23-1034-DGE-GJL, dkt. # 116 at 24-40. Plaintiff asserted

1 that he had been prescribed a low sodium and mechanical soft diet to address various medical
2 conditions, and that the meals he was provided were unhealthy, monotonous, and not
3 nutritionally adequate. *Id.*, dkt. # 116 at 28-31, 37-39. Plaintiff claimed that the meals posed a
4 serious risk of harm to his health in light of his pre-existing medical conditions. *See id.* While
5 Plaintiff's amended complaint was somewhat unclear as to when these alleged violations
6 occurred, the pleading as a whole appears to have arisen out of events that occurred at KCCF
7 throughout 2023. *See id.*, dkt. # 116.

8 III. DISCUSSION

9 Under 28 U.S.C. 1915(a) a federal court may authorize the commencement of a civil
10 action without the prepayment of fees, *i.e.*, *in forma pauperis*, upon the submission by a litigant
11 of an affidavit stating, *inter alia*, that he is unable to pay the costs of the lawsuit. However, the
12 statute also provides that a federal court must dismiss a case filed *in forma pauperis* "at any time
13 if the court determines" that the action is frivolous or malicious, fails to state a claim upon which
14 relief may be granted, or seeks monetary relief from a defendant who is immune from such
15 relief. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).

16 A complaint is frivolous when it has no arguable basis in law or fact. *Franklin v. Murphy*,
17 745 F.2d 1221, 1228 (9th Cir. 1984), *abrogated on other grounds by Neitzke v. Williams*, 490
18 U.S. 319 (1989). The Ninth Circuit has recognized that an *in forma pauperis* complaint may be
19 dismissed as frivolous if the Plaintiff's claims are redundant. *Hernandez v. Denton*, 861 F.2d
20 1421, 1426 (9th Cir. 1988), *rev'd on other grounds*, 504 U.S. 25 (1992); *see also Tripathi v. First*
21 *Nat'l Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987).

22 Defendant Wakeen argues that the claim asserted against her in this action is redundant,
23 and therefore frivolous, because it arises out of the same series of events and facts already under

1 review in case C23-1034-DGE-GJL. (Dkt. # 43 at 3-5.) Defendant asserts that in both this case
2 and the earlier filed case, Plaintiff asks the Court for relief based on meals Plaintiff received
3 while incarcerated at KCCF, with the only distinguishing factor being the legal basis upon which
4 he brings the claims. (*Id.* at 5.) Defendant maintains that while Plaintiff may seek redress for any
5 alleged violation of his constitutional rights, he “is not entitled to waste judicial resources by
6 litigating the same series of events and facts in two courtrooms simultaneously.” (*Id.*)

7 Plaintiff argues in response to Defendant’s motion that at the time he added Defendant
8 Wakeen to case C23-1034-DGE-GJL, he had not yet been approved to receive a kosher diet.
9 (Dkt. # 50 at 3.) Plaintiff asserts that he was approved to receive kosher meals on May 22, 2024,
10 after he filed his amended complaint in case C23-1034-DGE-GJL on May 20, 2024, and that it
11 was after he was approved to receive the religious meals that he was subjected to a new series of
12 events giving rise to different constitutional claims based on new and different facts. (*See id.* at
13 3-4.) Plaintiff also asserts that he was precluded by Court order from amending his claims in case
14 C23-1034-DGE-GJL to add religious claims, which necessitated the filing of a new complaint.
15 (*Id.* at 4.) Finally, Plaintiff notes that Defendant Wakeen has now been granted summary
16 judgment in case C23-1034-DGE-GJL and, thus, is no longer a defendant in two pending
17 actions. (*Id.*)

18 Defendant, in her reply, argues that Plaintiff’s opposition does not dispute that the instant
19 action arises out of the same series of events and facts as the claims asserted in C23-1034-DGE-
20 GJL, and that this action is therefore properly dismissed as frivolous as to her. (*See* dkt. # 53.)

21 In fact, as noted above, Plaintiff does dispute that the instant action arises out of the same
22 series of events and facts as the claims asserted in his earlier action, and this Court concurs. The
23 events giving rise to the instant action were set in motion upon the approval of Plaintiff’s request

1 to receive kosher meals, which occurred after Plaintiff filed his amended pleading in case C23-
2 1034-DGE-GJL. Moreover, Plaintiff's claim that the meals he received after May 22, 2024, did
3 not satisfy the requirements of his religion, and therefore violated his rights under the First
4 Amendment and RLUIPA, is substantively different than the claims asserted in case C23-1034-
5 DGE-GJL, where he complained that the meals that comprised his special medical diet were
6 monotonous and unhealthy.

7 The Court is not persuaded that the religious meal claim asserted against Defendant
8 Wakeen in this action is redundant of the claims asserted in Plaintiff's earlier action, or that it
9 would have been feasible or appropriate for Plaintiff to have asserted the claim in the earlier
10 action. This Court therefore concludes that the instant action is not frivolous as to the claims
11 asserted against Defendant Wakeen and that her request to dismiss the case against her on such
12 grounds should be denied.

13 IV. CONCLUSION

14 Based on the foregoing, this Court recommends that Defendant Wakeen's motion to
15 dismiss (dkt. # 43) be DENIED. A proposed Order accompanies this Report and
16 Recommendation.

17 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
18 served upon all parties to this suit not later than **fourteen (14) days** from the date on which this
19 Report and Recommendation is signed. Failure to file objections within the specified time may
20 affect your right to appeal. Objections should be noted for consideration on the District Judge's
21 motions calendar **fourteen (14) days** from the date they are filed. Responses to objections may
22 be filed by **the day before the noting date**. If no timely objections are filed, the matter will be
23 ready for consideration by the District Judge on **September 2, 2025**.

DATED this 12th day of August, 2025.

A handwritten signature in black ink, appearing to read "Michelle L. Peterson", written over a horizontal line.

MICHELLE L. PETERSON
United States Magistrate Judge